ONTARIO SECURITIES COMMISSION

PERSPECTIVES

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FEATURE

CSA Release Proposed Uniform Securities Legislation

In December 2003, the Canadian Securities Administrators released consultation drafts of legislation that proposes uniform securities laws. The drafts are being published as part of the CSA's Uniform Securities Legislation (USL) Project, which began in March 2002 with the objective of developing uniform securities legislation within two years.

The consultation drafts consist of a Uniform Securities Act and a Model Securities Administration Act. The Uniform Securities Act contains the core substantive provisions of securities law. The Model Securities Administration Act

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Perspectives welcomes comments. Comments should be sent to the Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8. Emails can be forwarded to perspectives@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION REPORTS

An overview of regulatory activities in Ontario that have an impact on capital markets. Copies of Notices and other documents referenced below are available on the Commission's website at www.osc.gov.on.ca.

OSC Supports Call for Single National Securities Regulator

The Ontario Securities Commission supports the call for a single national securities regulator issued December 17, 2003 by the Wise Persons' Committee (WPC).

"I'm certain it is no surprise that we support the call for Canada to move to a single securities regulator," said OSC Chair David Brown. Mr. Brown indicated that the OSC will review the report in detail before commenting on any specific issues and recommendations contained in the report. "I commend the WPC on the extensive consultations and analysis undertaken in preparing their report and the accompanying research papers."

Mr. Brown added that he concurs that there is considerable interest and momentum for securities regulatory reform in Canada at this time. "In this regard, I look forward to discussing the report with Ontario Finance Minister Sorbara, our regulatory colleagues in other Canadian jurisdictions as well as market participants. This report will undoubtedly contribute to the debate as we move forward with reforms for our securities regulatory system," added Brown.

OSC Chair Welcomes Findings in Regulatory Burden Report

On December 12, 2003, the OSC welcomed the report of the Regulatory Burden Task Force (RBTF) and stated its commitment to responding to the report's recommendations. The OSC had mandated the RBTF in October 2001 to hold informal consultations on how the OSC could reduce regulatory burdens for market participants, without requiring legislative changes or involving regulators in other jurisdictions.

"We commissioned the report because we are committed to continually improving the service we provide to market participants," OSC Chair Mr. Brown said, noting that independent Customer Satisfaction surveys of market participants have given the OSC high marks for customer service.

Senior OSC staff has established a process to review the RBTF recommendations and respond by the end of the current fiscal year, Mr. Brown said. In particular, he noted that the OSC is giving priority to acting on recommendations that are within the mandate of the RBTF and that will help improve customer service by removing burdens and costs.

"Keeping in mind that the interviews were completed in September 2002, we have already had time to act on some of the comments received by the Task Force," said Mr. Brown. "In fact, we have addressed over 20 per cent of the comments to date and are well on our way to addressing a further 25 per cent. A good majority of the remaining recommendations need further study before we can decide how, or if, we will implement them."

"As a measure of our accountability, we will report in our 2004 Annual Report on the measured approach we have taken to implement RBTF recommendations," Mr. Brown said.

OSC Probes Mutual Fund Practices on Late Trading and Market Timing

The Ontario Securities Commission has sent a letter to all managers of publicly offered retail mutual funds that trade in Ontario, in order to confirm that mutual funds have effective policies and procedures in place to detect and prevent trading abuses such as late trading and market timing. Based on the responses received and on a sampling of the industry, the OSC will follow up on the industry's specific practices. In some cases, the OSC may examine funds' internal policies and procedures, as well as examine trading data or request the results of internal tests conducted by funds.

Late trading is illegal and occurs when purchase or redemption orders are received after the close of business, but are filled at that day's price rather than the next day's price. Late trading is a violation of National Instrument 81-102, a nationally-adopted instrument that regulates mutual funds.

Market timing involves short-term trading of mutual fund securities to take advantage of short-term discrepancies between the price of a mutual fund's securities and the stale values of the securities within the fund's portfolio. International funds are most vulnerable to this type of trading abuse, as traders can exploit differences between time zones. Where it happens, market timing may be in violation of mutual fund policies. Further, the heavy trading creates transaction costs, which reduce returns of other longer term investors. As such, market timing arrangements may be in violation of a fund manager's fiduciary duty under section 116 of the *Ontario Securities Act*.

Integrated Market Enforcement Teams Target Capital Markets Fraud

On November 28, 2003, Federal Solicitor General Wayne Easter launched the first two Integrated Market Enforcement Teams (IMETs) in Canada.

The two Greater Toronto Area IMETs are designed to respond swiftly to major capital markets fraud and market-related crimes. They are made up of highly skilled Royal Canadian Mounted Police investigators, lawyers and other investigative experts working together to detect, investigate and deter serious capital markets fraud. They will work closely with securities regulators, federal and provincial authorities, and police of local jurisdiction.

Toronto will eventually have a total of three IMETs operating. IMETs will soon open in Vancouver, Montreal and Calgary to cover Canada's major financial centres. The goal is to have nine IMETs operating in Canada by April 1, 2006.

The IMETs help fulfill a commitment made in the 2002 Speech from the Throne and Budget 2003 to spend up to $120 million over the next five years to boost investor confidence in Canadian financial markets and sustain Canada's economic growth.

For more information, call Cpl. **Michele Paradis**, RCMP, (416) 952-4619.

Scam Artists Can Hide Behind Impressive Names, Addresses and Websites

Investors need to be alert and investigate prospective investments in order to avoid becoming victims of fraud, experts say. Though companies may claim to be associated with a well-known financial organization, they may be name-dropping under false pretences. Similarly, a fictional entity may use an address that is incorrectly spelled, but close enough to a real address to go unnoticed. Fraudulent financial companies may use a fake address in the financial district to further investors' trust in them. Company websites can also mislead about the company's reputation. In one case, a high-rent company address listed on an attractive financial website actually led to a one-room office where one secretary fielded calls to a variety of scam operations.

How can you protect yourself?

- The Office of the Superintendent of Financial Institutions Canada posts warning notices on the website *www.osfi-bsif.gc.ca* about "entities that it believes may be of concern to the business community and the public." The warning notices show the company name and address, their web address and related entities, and the agency to contact if you have any further information to report.
- Check the registration of an investment, and the person or company offering it - call the OSC Contact Centre toll-free at 1-877-785-1555, or check the registrants' listing at *www.osc.gov.on.ca*.
- Check the credibility of company information. The documents that public companies file with securities regulators are available on *www.sedar.com*. Verify any information you receive with a credible source before investing your money.

If you suspect a scam involving securities, contact the Ontario Securities Commission at 1-877-785-1555. You can also learn more about investment fraud and other investment topics on-line at *www.investorED.ca*.

OSC Sets Out Regulatory Regime for Foreign-Based Stock Exchanges

On October 31, 2003, OSC staff published a notice outlining its approach to regulating foreign-based stock exchanges seeking to access Ontario's capital markets. The notice provides a transparent, uniform approach that staff will apply when the Commission considers requests for recognition or exemption from recognition by foreign-based stock exchanges. The approach was prepared in response to a number of recent inquiries made by foreign-based exchanges.

Foreign-based stock exchanges may apply for recognition or for an exemption from recognition. The approach to be taken in exempting a foreign-based exchange is similar to the one used for recognition but seeks to avoid applying duplicative and inefficient requirements on exchanges that are already subject to sufficient regulatory scrutiny in their home jurisdiction. "These proposals continue to build on our framework that allows for a vital, competitive capital market in Ontario that fosters lower trading prices and improved execution of trades," said OSC Chair Brown.

OSC *Staff Notice 21-702* is published in the October 31 issue of the *OSC Bulletin* and is available on the OSC's web site at *www.osc.gov.on.ca*.

OSC Chair Named Laurier Outstanding Business Leader of the Year

OSC Chair David A. Brown has been named the Outstanding Business Leader of the Year by Wilfrid Laurier University. The award selection committee - which includes past winners, faculty from Laurier's School of Business and Economics and

leading business executives who sit on the school's advisory board - selected Mr. Brown in recognition of his outstanding work in promoting stronger regulatory frameworks for good corporate governance in Canada.

"Mr. Brown's personal commitment and accomplishments certainly reflect the characteristics that Laurier wants to instill in its students," said Scott Carson, dean of the School of Business and Economics.

A news release by the university noted that under Mr. Brown's leadership, "the OSC has bolstered its enforcement branch, strengthened investor education initiatives and focused its activities to improve service to market participants and provide the right regulatory response to emerging issues." Brown is the 16th recipient of the award, which recognizes business leaders who exemplify the qualities and characteristics of leadership excellence and management.

InvestorED.ca launches "Getting Back On Track" Calculator

While markets having been heading higher this year, is the recovery enough to offset the losses felt by many investors as we come out of a three-year bear market? A new calculator can help answer that question. The Getting Back on Track calculator, a brainchild of financial author and writer Bruce Cohen, helps investors calculate what it will take to get their portfolios back on track.

Users simply enter their information: what their investment was worth, what it's worth now, what return they had aimed for, and the time frame; the tool will tell them the rate of growth needed to put them back on plan. There are also three examples that users can enter into the calculator so they can see how it works.

This new calculator joins the popular Mutual Fund Fee Impact Calculator and interactive tools from the Canadian Securities Administrators on investorED.ca's Interactive Centre.

For more information about the Investor *e*.ducation Fund, visit the *About Us* section of *www.investorED.ca*.

Notice of Minister of Finance Approval of Amendments to OSC Rule 13-502 Fees

On November 17, 2003, the Minister of Finance approved the amendments to Rule 13-502 Fees, including Forms 13-502F1, 13-502F2, 13-502F3 and 13-502F4, as a rule under the Act and approved the amendments to Companion Policy 13-502CP.

The amendments to the Rule and the Companion Policy came into force on December 1, 2003. The amendments to the Rule and the Companion Policy are published in Chapter 5 of the November 28 OSC Bulletin. In addition, a combined version of the original Rule, Forms and Companion Policy incorporating the approved amendments are published in Chapter 5 of the Bulletin for the user's reference.

To further assist users of the rule, the OSC has issued a Staff Notice on Frequently Asked Questions on Rule 13-502. It is published in the November 28 edition of the OSC Bulletin.

Notice of Minister of Finance Approval of OSC Rule 13-503

On November 13, 2003, the Minister of Finance approved Rule 13-503 (*Commodity Futures Act*) Fees, including Forms 13-503F1 and 13-503F2, as a rule under the Act and approved Companion Policy 13-503CP as a policy under the Act. The Rule and the Companion Policy were published for comment in the OSC Bulletin on May 16, 2003 at (2003) 26 OSCB 3783. The Commission adopted the Rule and the Companion Policy on September 16, 2003 and both were published in final form in the Bulletin on September 19, 2003 at (2003) 26 OSCB 6499. The Rule and Companion Policy came into force on December 1, 2003.

Concurrently with making the Rule, the Commission has revoked Schedule 1 to Regulation 90 of the Revised Regulations of Ontario, 1990, made under the Act (the Regulation). The amendment to the Regulation was also approved by the Minister of Finance on November 13, 2003 and was filed as Ontario Regulation 398/03 on November 24, 2003. The amendment to the Regulation came into force at the time the Rule came into force, on December 1, 2003.

The Rule and Companion Policy are published in Chapter 5 of the November 28 Bulletin.

INTERNATIONAL REPORTS

An overview of OSC activities with international organizations to improve the regulation of financial services throughout the world.

IOSCO Announces Signatories to Multilateral MOU

In May 2002, The International Organization of Securities Commissions (IOSCO) endorsed a comprehensive multilateral memorandum of understanding (MOU) designed to enhance the ability of securities regulators around the world to cooperate and share enforcement-related

information. Among other things, the MOU facilitates the investigation and prosecution of cross-border securities violations.

Since May 2002, IOSCO has been conducting a comprehensive screening process in order to establish that regulators who wish to sign the MOU have the legal capacity to fully comply with its terms. The OSC's Director of Enforcement, Mike Watson, was a member of the Task Force that developed the MOU and is an active member of the committee involved in screening applicants and monitoring signatories' ongoing compliance with the MOU.

At its annual meeting in Seoul, Korea in October 2003, IOSCO announced the names of the first MOU signatories. These include the four provincial securities commissions that participate in IOSCO (the OSC and the securities commissions in Alberta, British Columbia and Quebec), as well as securities regulators in Australia, France, Germany, Greece, Hong Kong, Hungary, India, Italy, Jersey, Lithuania, Mexico, New Zealand, Poland, Portugal, South Africa, Spain, Turkey, the United Kingdom and the United States.

The MOU is available on IOSCO's website at *www.iosco.org*.

IOSCO Issues Statements of Principles for Analysts and Credit Rating Agencies

In the Summer 2003 edition of *Perspectives*, we reported that IOSCO had established special Task Forces to develop statements of principles (Principles) regarding sell-side analyst conflicts of interest and credit rating agencies (CRAs). At its September meeting, IOSCO's Technical Committee approved the issuance of these Principles and accompanying reports.

The Principles for analysts include "Core Measures" intended to eliminate or mitigate problematic practices regarding securities analysts. These Core Measures recommend that standards should be implemented that:

- Prohibit analysts from trading securities or related derivatives ahead of publishing research on the issuer of those securities;
- Prohibit firms that employ analysts from promising issuers favourable research coverage, specific ratings or specific price targets in return for a future or continued business relationship, service or investment;
- Prohibit analysts from participating in investment banking sales pitches and road shows;
- Prohibit analysts from reporting to the investment banking function;
- Prohibit analyst compensation from being directly linked to specific investment banking transactions;
- Prohibit the investment banking function from pre-approving analyst reports or recommendations (except in circumstances subject to oversight by compliance or legal personnel where investment banking personnel review a research report for factual accuracy prior to publication); and
- Require analysts, or firms that employ analysts, to publicly disclose whether the issuer or other third party provided any compensation or other benefit in connection with a research report.

The Principles for CRAs set out the following high-level objectives intended to reinforce the integrity of the credit rating process and assist CRAs in providing investors with informed, independent opinions and analyses:

- CRAs should try to issue opinions that help reduce the asymmetry of information among borrowers, lenders and other market participants.
- CRAs should, as far as possible, avoid activities, procedures and relationships that may compromise or appear to compromise the independence and objectivity of the credit rating operations.
- CRAs should make disclosure and transparency an objective in their ratings activities.
- CRAs should maintain in confidence all non-public information communicated to them by an issuer, or its agents, under the terms of a confidentiality agreement or otherwise under a mutual understanding that the information is shared confidentially.

The Principles and accompanying reports can be downloaded from the library on IOSCO's website at *www.iosco.org*.

IOSCO Adopts Instrument to Assist Regulators in Drafting More Effective Securities Laws

At the Seoul conference, IOSCO adopted a new *Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation*. The Methodology can be used to assist jurisdictions in:

- identifying areas where their securities laws do not meet the international standards set out in the IOSCO Principles;
- categorizing failures in implementation by degree of severity;
- identifying areas for priority action; and
- developing action plans to seek any needed reforms.

The Methodology is likely to be used in a variety of contexts, including self-assessments by IOSCO members, by the World Bank and the International Monetary Fund as part of their Financial Sector Assessment Program and as a tool to provide training and technical assistance to developed and emerging markets.

The Methodology can be downloaded from the library on IOSCO's website at *www.iosco.org*.

OSC Staff Provide Expertise to the IMF and the UK FSA

In 2003, IOSCO nominated Senior Legal Counsel Janet Holmes to conduct a comprehensive assessment of New Zealand's implementation of the *IOSCO Principles*, using IOSCO's new *Methodology*. The assessment was carried out as part of the International Monetary Fund's Financial Sector Assessment Program. Janet joined the IMF-led mission to New Zealand in October and November 2003, where she met with financial sector regulators and market participants and prepared a comprehensive report that will be used by the IMF and New Zealand authorities in discussions regarding financial sector reforms.

Litigation Counsel Yvonne Chisholm will be joining the Enforcement Team at the Financial Services Authority in the UK as part of a one-year exchange program commencing in February 2004. A senior investigator from the UK FSA will be joining the Enforcement Branch at the OSC for the same period.

Randee Pavalow Selected to Chair IOSCO Committee on Market Intermediaries

Capital Markets Branch Director Randee Pavalow has been selected by IOSCO's Technical Committee to chair its Standing Committee on Market Intermediaries. Randee has been an active member of this committee for several years, and previously represented the OSC on IOSCO committees focusing on secondary markets and the internet. This appointment reflects Randee's extensive experience in capital markets regulation and international securities law reform initiatives.

For more information about these and other international initiatives, please contact **Susan Wolburgh Jenah**, General Counsel and Director, International Affairs (416) 593-8245, *swolburghjenah@osc.gov.on.ca*, or **Janet Holmes**, Senior Legal Counsel, International Affairs, (416) 593 8282, *jholmes@osc.gov.on.ca*.

CANADIAN SECURITIES ADMINISTRATORS REPORTS

The CSA, a council of the 13 securities regulators of Canada's provinces and territories, coordinates and harmonizes regulation for the Canadian capital markets.

Securities Regulators Release New National Disclosure Rule

Securities regulators have taken another significant step toward a uniform legislative and regulatory framework for Canadian public companies with the publication of a new national rule for continuous disclosure.

The new rule issued December 19, 2003 – National Instrument 51-102 Continuous Disclosure Obligations – will eliminate the problem of companies having to meet different disclosure requirements in multiple jurisdictions in which they report, and will form a basis for implementing an integrated disclosure system. The continuous disclosure requirements addressed by NI 51-102 include: financial statements, annual information forms, management's discussion and analysis (MD&A), material change reports, business acquisition reports and statements of executive compensation.

"The introduction of this new, single harmonized rule demonstrates a cooperative effort by all CSA jurisdictions in establishing a single set of financial reporting and other disclosure requirements for companies that are reporting issuers in more than one jurisdiction," said Stephen Sibold, Chair of the Canadian Securities Administrators and of the Alberta Securities Commission. "It will enhance the consistency of disclosure available to primary and secondary market investors, and assist in establishing a common approach to regulatory review of continuous disclosure filings."

Regulators expect that every CSA member will implement the new rule, and with necessary government approvals, the rule will come into force on March 30, 2004. The new rule requires many companies with a fiscal year starting on or after Jan. 1, 2004 to report their first quarter interim financial statements earlier than before – within 45 days after the end of the quarter, reduced from the current 60 days. Only companies categorized as venture issuers will continue to have 60 days to file their interim reports.

Regulators Approve New Rule to Ensure Equity Monetization Disclosure

Canadian securities regulators have approved a rule that will require insiders to disclose the existence and material terms of insider transactions involving derivatives, including so-called "equity monetization" transactions.

The Canadian Securities Administrators developed Multilateral Instrument 55-103 Insider Reporting for Certain Derivative Transactions (Equity Monetization) to respond to concerns that the existing insider reporting requirements in Canadian securities legislation may not cover certain derivative-based transactions, including equity monetization transactions. Subject to ministerial approvals, the rule is scheduled to come into force on February 28, 2004.

Equity monetization transactions are derivative-based transactions that allow an investor to "cash out" an equity position without formally selling the securities that make up the position. The rule does not prohibit insiders from entering into monetization transactions, but does require that insiders disclose them to the public, so that investors can make their own determination as to their significance.

"While the current rules capture most of these types of transactions, this rule removes any doubt that may have existed," said Stephen Sibold, Chair of the CSA and of the Alberta Securities Commission. "If you are an insider, and you cash out an equity position through an equity monetization transaction, you need to disclose that transaction. If these kinds of transactions are not disclosed, an insider's publicly disclosed holdings do not accurately reflect the insider's 'true' economic position in the company."

In certain circumstances, the instrument will also require that insiders disclose monetization arrangements entered into before the instrument comes into effect that continue to have an impact on an insider's publicly reported holdings.

The rule and related materials are available on most provincial securities commission websites, and is expected to be adopted by all jurisdictions of the CSA, other than British Columbia. The British Columbia Securities Commission has participated in the development of the rule, but has decided to implement similar requirements by proclaiming amendments to the *British Columbia Securities Act* and providing exemptions in a BC instrument instead.

Regulators Release Illegal Insider Trading Report

The Canadian Securities Administrators have received a report from an independent task force which recommends practices to address illegal insider trading in Canadian capital markets. The recommendations in the report focus on addressing illegal insider trading from three directions: prevention, detection and deterrence.

The report was developed by the Illegal Insider Trading Task Force, which was established in September 2002, and included representatives from the Ontario, Quebec, British Columbia and Alberta securities commissions, the Investment Dealers Association of Canada (IDA), the Bourse de Montréal (Mx) and Market Regulation Services Inc. (RS).

Key recommendations in the report include:

- Through information and best practice recommendations, encourage strict adherence to information containment practices by senior management, corporate directors, lawyers and accountants;
- Give investors real-time access to trading data with markers used to identify trades by insiders;
- Improve surveillance capabilities through a shared database among regulators to integrate client data with data from trading on Canadian equities and derivatives markets;
- Reduce the use of offshore accounts in illegal insider trades by identifying jurisdictions that have unsatisfactory regulatory regimes and by evaluating the costs and benefits of requiring offshore financial institutions that open accounts for Canadian investors to consent to identify individuals responsible for specific trades;
- Support the approval of proposed criminal sanctions under the Federal Bill C-46; and
- Recommend the formation of a national subgroup of the Royal Canadian Mounted Police Integrated Market Enforcement Teams to focus solely on illegal insider trading.

The recommendations are available on the CSA website at *www.csa-acvm.ca.*

Regulators Report on Industry's Straight-Through Processing Readiness

On September 19, 2003, the CSA released a report on market participants' readiness to process securities transactions in a fully automated environment rather than through multi-step manual processes. The findings are the result of an online survey of Straight-Through Processing (STP) readiness carried out last May.

Overall, the report shows that a slight majority (52%) of participants feels that their organization is prepared or somewhat prepared for STP, while 34% feel that they are unprepared or somewhat unprepared and 15% don't know.

However, the report also shows that the assessment by firms finding themselves prepared is not supported by the responses to many of the specific quantitative 'progress' questions. In fact, 55% of those organizations who feel prepared reported no STP-related spending in 2002. A significant number of firms also showed no expenditures planned for 2003 and 2004, which appears to be at odds with the degree of STP processing currently being reported.

"Achieving STP readiness industry-wide by mid 2005 is a lengthy and complex undertaking that requires that firms plan and budget activities several years in advance of the deadline," said Stephen Sibold, Chair of the CSA. "The apparent disconnect between firms' self-assessments of their readiness and the actual level of preparations they have underway suggests that we need to take a closer look at industry's state of readiness."

The regulators will consult industry stakeholders to determine the reasons behind the gap between the perceived state of STP readiness and actual state of STP processing. As well, staff will conduct a separate survey with key infrastructure participants, including custodians, transfer agents, exchanges, clearing agencies and third party service providers. The results of the infrastructure survey should shed further light on the overall state of STP preparedness.

Audit Oversight Board Proposes Registration Process for Auditors of Public Companies

The Canadian Public Accountability Board (CPAB) has released a proposed registration process for auditors of reporting issuers.

A new rule proposed by the Canadian Securities Administrators on June 27, 2003 (Multilateral Instrument 52-108, *Auditor Oversight*) will require auditors of reporting issuers to be participants in good standing with the CPAB when they issue an auditor's report with respect to their clients' financial statements. The CSA rule is expected to take effect March 30, 2004. The two-step registration process proposed by the CPAB requires firms to file a notice of their intent to participate by December 31 and to complete their registration by February 29, 2004.

The CPAB was created in 2002 by Canada's financial and securities regulatory authorities as part of a series of initiatives to restore investor confidence. Its mandate is to promote high quality, independent auditing of public companies in Canada.

More information about the CPAB is available on the organization's new web site at *www.cpab-ccrc.ca*.

Proposed National Policy 41-201 *Income Trusts and Other Indirect Offerings* Published for Comment

Proposed National Policy 41-201 *Income Trusts and Other Indirect Offerings* was published for comment on October 24, 2003. The comment period closed on December 23, 2003. The purpose of the Policy is to provide guidance and clarification from the Canadian Securities Administrators to market participants about income trusts and other indirect offering structures, in particular about prospectus disclosure, continuous disclosure, prospectus liability, and sales and marketing materials. The Policy discusses the CSA's views about how the existing regulatory framework applies to non-corporate issuers (such as income trusts) and to indirect offerings, in order to minimize inconsistent interpretations and to better ensure that the intent of the regulatory requirements is preserved.

Although the main focus of the Policy is on the income trust structure in the context of public offerings, the principles also apply to income trust structures in other contexts, such as the reorganization of a corporate entity into a trust, applications for discretionary relief, and the fulfillment by income trusts of their continuous disclosure obligations.

ENFORCEMENT REPORTS

The following are summaries of recent enforcement proceedings and hearings before the Ontario Securities Commission. Copies of Notices of Hearing, Statements of Allegations, Reasons for Decisions and Orders referenced below are available on the Commission's website at www.osc.gov.on.ca.

OSC Approves Settlement Between Staff and Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.

On December 16, 2003, the Ontario Securities Commission approved a settlement agreement between staff of the commission and Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.

The proceeding involved the sale of shares in EPA Enterprises Inc. Each of the respondents breached section 25 of the *Securities Act* by selling the shares without being registered to trade in securities, and Pangia breached section 53 of the Act by participating in the distribution of securities without filing and obtaining receipts for a preliminary prospectus and a prospectus. Further, the respondents' conduct was contrary to the public interest.

The sanctions include permanent cease trade orders against all three respondents, permanent prohibitions against Pangia and Capista from acting as a director or officer of any issuer, and the payment of $70,000 in respect of the costs of the investigation. The panel, comprised of Vice-Chair Paul Moore, Commissioner Wendell Wigle, Q.C. and Commissioner Paul Bates, approved the settlement as being in the public interest. Vice-Chair Moore stated that the "seriousness of the sanctions shows that we do not treat these matters lightly" and that permanent sanctions were justified on the facts.

OSC Issues Freeze Directions in the Matter of ATI Technologies Inc.

On December 5, 2003, the Ontario Securities Commission issued directions to two financial institutions to hold the contents of an account held in the name of Sovereign Ltd. On December 11, 2003, the Commission applied to continue the directions in the Ontario Superior Court of Justice. The Court adjourned the application on consent to February 10, 2004 and continued the directions to that date.

On January 16, 2003 Staff of the Ontario Securities Commission issued a Statement of Allegations against ATI Technologies Inc. and others including Jo-Anne Chang and David Stone. In the Statement of Allegations, Staff alleged that Chang and Stone committed illegal insider trading through QDOS Capital Corp., a company incorporated by Chang and Stone in the Turks and Caicos. In the Statement of Allegations, Staff further alleged that Chang and Stone moved the illegally obtained funds through various offshore entities. Staff allege that the funds eventually were transferred to the Sovereign Ltd. account. Staff allege that the funds in the Sovereign Ltd. account were obtained as a result of contraventions of Ontario securities law.

OSC Approves Settlement Between Staff and Assante Financial Management Ltd.

Staff of the Ontario Securities Commission and Assante Financial Management Ltd., including its integrated businesses, entered into a settlement agreement which was approved on November 19, 2003, by Charlie Macfarlane, OSC Executive Director.

From January 1, 2000 to October, 2002, a number of AFM sales people served Ontario clients without being registered in Ontario. AFM agreed that by failing to ensure that its salespeople did not trade on behalf of clients resident in Ontario without being registered contrary to s. 25(1) of the *Securities Act*, they failed to supervise their sales people contrary to Ontario Securities Commission Rule 31-505 which requires a dealer to supervise each of its registered sales people in accordance with Ontario securities law. AFM also agreed that between October 18, 2001 and October 2002, it failed to enforce a written Directive prohibiting out-of-province trading contrary to s.1.2 of Ontario Securities Commission Rule 31-505.

AFM undertakes to submit to an external review of its policies, procedures and internal controls regarding out-of-province trading and to implement any necessary recommendations at its expense, in respect of the issues identified in the Settlement Agreement.

OSC Approves Settlement Between Staff and Jonathan Carley

On December 10, 2003, the Ontario Securities Commission approved a settlement agreement reached by Staff of the Commission with Jonathan Carley.

Carley was a person in a special relationship with Finline Technologies Limited, a reporting issuer in Ontario. He admitted that he purchased securities of Finline with knowledge of a material fact or change with respect to Finline that had not been generally disclosed, contrary to subsection (76) 1 on the *Securities Act*. Carley also admitted his conduct was contrary to the public interest.

Carley was the manager of corporate development with Finline. On February 2, 2000 with knowledge that Finline had exercised its option to purchase Impress Image Compression Inc., which information was not generally disclosed, he purchased 30,500 shares of Finline. Carley sold the shares after the news of the pending acquisition was made public and made a profit of $59,600.

The Commission reprimanded Carley and made an order prohibiting him from trading in securities for 18 months. Carley made a voluntary payment to the Commission of $89,400 which is 1½ times the profit he made and paid $20,000 towards the Commission's costs.

OSC Seeks Leave to Appeal Divisional Court Decision in Donnini Matter

On November 14, 2003, the Ontario Securities Commission filed its notice seeking leave to appeal to the Ontario Court of Appeal two aspects (sanctions and costs) of the decision of the Ontario Divisional Court in respect of Piergiorgio Donnini.

Appeal From Sentence in the Matter of Glen Harvey Harper

On October 31, 2003, the Court of Appeal for Ontario released its decision on the sentence appeal in this matter.

On July 21, 2000, Glen Harvey Harper was convicted in the Ontario Court of Justice on two counts of insider trading in relation to his trading of shares in Golden Rule Resources Inc., a junior mineral exploration company listed on the Toronto Stock Exchange. The trial judge sentenced Mr. Harper to one year's imprisonment on each count, to be served concurrently, and a fine of approximately $4 million based on the application of specific fine provisions in the *Securities Act* governing insider trading offences.

On appeal by Mr. Harper to the summary conviction appeals court, Mr. Harper's term of imprisonment was reduced to six months on each count, to be served concurrently, and the fine was reduced to $1 million on each count. The summary conviction appeals court reduced the fine on the ground that based on the summary conviction appeals court's interpretation of the specific fine provisions, those provisions could not be applied.

The Court of Appeal granted the Crown leave to appeal on the issue of the interpretation of the specific fine provisions governing insider trading offences under the *Securities Act*. The Court of Appeal agreed with the Crown that the summary conviction appeals court had erred in its interpretation of the fine provisions. However, the Court of Appeal dismissed the Crown's request to restore the original fine imposed by the trial judge on the basis that the trial judge had erred in including trading accounts beneficially owned by Mr. Harper's wife and children in the application of the specific fine provisions. As a result, despite upholding the Crown's appeal on the primary issue of the application of the fine provisions for insider trading offences, the Court of Appeal affirmed the fine imposed by the summary conviction appeals court judge of $2 million, in addition to a $400,000 victim fine surcharge. Mr. Harper has already served his six month term of imprisonment.

Supreme Court of Canada Dismisses Appeal by Deloitte & Touche v. OSC

In a unanimous decision issued on October 31, 2003, the Supreme Court of Canada dismissed the appeal of Deloitte & Touche LLP. This appeal arose in the context of a pre-hearing disclosure application brought in the Ontario Securities Commission's proceeding in the matter of Philip Services Corporation. The main issue in the appeal focused on whether the OSC properly ordered disclosure of compelled information which is subject to confidentiality provisions in the *Ontario Securities Act*.

In dismissing the appeal with costs, the Supreme Court made the following comments:

"In short, like the Court of Appeal, I (Justice Iacobucci) find that the decision of the OSC was reasonable and soundly based with respect to the disclosure of all the compelled material to Philip and the officers to allow them in the circumstances to mount a full answer and defence. [...] There is a reasonable possibility that all of the compelled material relating to

Deloitte's audit of Philip will be relevant to the allegations against Philip and the officers. Consequently, the application by the OSC of the relevance standard from Stinchcombe was reasonable in all the circumstances. [...]

The OSC admittedly has a discretion owing to its expertise to order disclosure of the compelled information if found to be in the public interest. Like Doherty J.A., I believe the OSC properly balanced the interests of disclosure to Philip and the officers along with the protection of the confidentiality expectations and interest of Deloitte. In this respect, I am of the view that in making a disclosure order in the public interest under s. 17, the OSC has a duty to parties like Deloitte to protect its privacy interests and confidences. That is to say that the OSC is obligated to order disclosure only to the extent necessary to carry out its mandate under the Act. In this case, the OSC properly weighed the necessary disclosure and the interests of Deloitte."

The Supreme Court's reasons for decision are available at *www.scc-csc.gc.ca*.

OSC Proceedings in the Matter of Universal Settlements International Inc.

On October 27, 2003, the Divisional Court released reasons in the matter of Universal Settlements International Inc. v. the Ontario Securities Commission. The Divisional Court upheld the decision of the Commission, by which it refused to quash an investigation order and summons in respect of Universal Settlements International Inc.

The Court held:

"We cannot see that the Commission, in any way, exceeded its jurisdiction in compelling testimony and production of documents in aid of an investigation. In our view, even though USI is neither a reporting issuer nor a registrant under the Act, it is still subject to the parameters of the Act and must co-operate with the Commission in its investigation. Further, it matters not that viatical settlements are not distinctly described under the Act. We find that the Commission has the power to order such investigations that it deems are in the public interest, and that it is in no way expanding its authority in doing so. The decision of the Commission therefore stands. For the reasons set out herein, the application for judicial review is dismissed."

OSC Issues Notice of Hearing and Statement of Allegations in Respect of Brian Peter Verbeek and Lloyd Hutchinson Ebenezer Bruce

The Ontario Securities Commission issued a Notice of Hearing and Statement of Allegations in respect of Brian Peter Verbeek and Lloyd Hutchinson Ebenezer Bruce on October 8, 2003.

According to the Statement of Allegations, from August 1999 to May 2000, Verbeek, a registered representative, assisted clients in purchasing shares of various companies using funds located in their locked-in RRSPs. Concurrently, the clients obtained a loan, at times with the assistance of Verbeek, from the scheme's promoters representing a portion of the purchase price of the shares, varying from approximately 60% to 80%. It is alleged that Verbeek participated in an illegal distribution and failed to ascertain the general investment needs, objectives and the suitability of the investments for his clients in breach of the *Securities Act*. Staff also allege that Verbeek engaged in conduct that is contrary to the public interest.

Staff also allege that Bruce, a Supervisory Procedures Officer at the now-defunct Buckingham Securities Corporation, failed to adequately supervise Verbeek's accounts and Verbeek's actions in relation to his accounts in breach of the *Securities Act*.

Reasons for Decision in the Matter of Dimethaid Research Inc.

On October 17, 2003, the Commission released reasons respecting its decision on March 7, 2003 to dismiss an application by Dimethaid Research Inc. to review the Director's decision dated February 20, 2003 objecting to a proposed Rights Offering made by the Company. The original objection of the Director was made on the following basis:

1. The Annual Financial Statements of the Company for the year ended May 31, 2002 were not in accordance with generally accepted accounting principles in Canada. In applying CICA Handbook section 3860, Financial Instruments, an acquisition (respecting Oxo Chemie AG) made by Dimethaid ought to have been treated as equity not as a liability.
2. The consideration owing for the acquisition was on an interest free basis over a period of five years. The Director noted that the obligation should be discounted to reflect its true value as at the balance sheet date (being the date of acquisition).

At the commencement of the hearing, Dimethaid advised the Commission that it agreed to restate its financial statements in accordance with point 1 above, concerning the treatment of the obligation as equity not as a liability. Thereafter, the hearing progressed on the issue of discounting and the appropriate value to be ascribed to the transaction.

The Commission found that the subject transaction was business combination to be recorded at fair value, in accordance with the CICA Handbook. The Commission concurred with Staff that the fair value of the consideration given for the transaction should be used to determine the fair value of the business acquired, rather than the assets acquired. According to the Commission, the evidence concerning the assets acquired by Dimethaid, including the patent, represented "a highly uncertain stream of future cash inflows". The Commission stated "...it [was] more appropriate to determine the fair value of the payment obligations - they are known amounts (whether in the form of cash or shares)".

OSC Approves Settlement Between Staff and Normand Riopelle and Rejects Settlement Agreement with Marlene Berry in the Saxton Matter

On October 1, 2003, the Ontario Securities Commission approved a settlement reached between Staff of the Commission and the respondent Normand Riopelle. It rejected a settlement reached between Staff and the respondent Marlene Berry.

Between 1995 and 1998, various Saxton-related companies issued securities, raising approximately $37 million from investors. In 1999, KPMG reported that the value of the Saxton assets, at its highest, was approximately $5.5 million. Staff alleges that the distribution of the Saxton securities was contrary to Ontario securities law.

Berry was employed by Rick Fangeat as the office administrator of Integrated Planning Services. Staff alleges that the vast majority of Integrated Planning Services' business related to the sale of the Saxton securities and that Fangeat acted as the manager of several Saxton salespeople. Staff further alleges that Berry was involved in the illegal distributions of the Saxton securities by, among other things, acting as a liaison between the Saxton salespeople and Saxton's head office and participating in clients' execution of subscription agreements. The panel rejected the settlement agreement reached between Staff and Berry finding that her role in the distribution of the Saxton securities was minor. Staff will not be proceeding further against Berry.

During the material time, Riopelle was a licensed life insurance agent. He has never been registered with the Commission. Riopelle sold $505,700 worth of the Saxton securities to eleven of his insurance clients. Riopelle failed to conduct the appropriate due diligence respecting the nature and quality of the Saxton products and the regulatory requirements to sell such products. Among other things, Riopelle told clients that the Saxton securities were similar in nature to an insurance segregated fund notwithstanding that the Offering Memoranda described such securities as speculative. The Commission approved the settlement agreement between Staff and Riopelle. The panel reprimanded Riopelle and imposed an eleven month cease trade order on him.

Further Funds Sent to Receiver in the Matter of Secure Investments, Daniel Shuttleworth and Andrew Keith Lech

In Orders dated September 3 and 24, 2003, the Ontario Superior Court of Justice determined that the contents of four bank accounts held in the name of Daniel Shuttleworth should be sent to KPMG Inc., a court-appointed Receiver and Guardian. The contents of all of these bank accounts had originally been frozen by the Ontario Securities Commission on the grounds that they contained investor funds solicited as part of an illegal securities investment scheme orchestrated by Andrew Keith Lech of Peterborough, Ontario.

By order of the Ontario Superior Court of Justice, KPMG Inc. is the Receiver and Guardian of the assets provided to Andrew Keith Lech by persons who invested money with him. Investors or any persons with a potential claim on the transferred funds should contact Szemenyei Kirwin MacKenzie LLP, counsel to the Receiver and Guardian. Szemenyei Kirwin MacKenzie can be reached by telephone, toll-free, at 1-866-433-8155 or at *www.skmlawyers.com*.

RECENT SPEECH

Excerpts from an address by David Brown, Q.C., Chair of the Ontario Securities Commission, to the Canadian Bar Association, December 2, 2003.

Ensuring fairness in our markets is crucial to investors, and vital to our economy. One way to demonstrate the importance of capital markets to the Ontario economy is by looking at the number of jobs it generates. In that respect, it is impressive to consider the resilience of the financial sector in Ontario over the past three years - three years of considerable volatility.

Payrolls for financial sector companies have grown by 1 per cent a year. The growth of new financial service products - in areas such as wealth management - has created the opportunity for considerably greater job creation in the years ahead.

To get a sense of the importance of the capital markets to Ontario's economy, consider this: Over 60,000 individual registrants are registered with the OSC here in Ontario - people who work in the securities and mutual fund industries. That's about half the total for the entire country.

There are about 1,700 securities firms in Canada. More than three-quarters of them do business in Ontario.

How big a share of Ontario's economy does the financial sector make up? When you include insurance and real estate as well as finance, it accounts for 20 per cent of Ontario's GDP, one-fifth of all economic activity in the province.

Equity trading on the TSX amounted to over $640 billion last year. That's equal to two-thirds of Canada's GDP. Bond trading across the country came to even more than the Canadian GDP, at more than a trillion dollars in value.

The numbers give concrete form to something that has become increasingly apparent — capital markets are a vital element of the Canadian economy. They are an especially important part of Ontario's economy.

And they are especially important for many of you. If our capital markets migrate south, the demand for many types of legal services will be sharply reduced.

...

Right now, we are working with the Law Society to develop appropriate guidance regarding a lawyer's obligation upon learning that management of a client company is engaged in dishonest, fraudulent, or illegal activity. How far up the ladder are lawyers required to go in reporting such activity?

It is important to keep in mind that when a lawyer represents a corporation, the client is not just management, even if management awarded the retainer. The client is the corporation as a whole. Does it not then follow that the lawyer should be required to bring any information that may indicate inappropriate activity potentially detrimental to the shareholders all the way up the management ladder to the board of directors, if necessary?

Taking the unfairness out of risk-taking must also include addressing illegal insider trading. It is crucial to contain information so that insiders don't get rich on the basis of privileged access to information, while everyone outside the circle pays the bill.

The report of the Insider Trading Task Force, released last month, addresses that, with 32 recommendations to combat illegal insider trading.

The task force called for cooperation across provincial borders - and Canada's securities commissions are responding. The Canadian Securities Administrators, the national coordinating group of provincial and territorial commissions, has decided to make this a priority.

This bodes well for one of the most important task force recommendations: formation of a nationally integrated working group on illegal trading - bringing together the securities commissions, SROs, and the RCMP.

One area the task force examined was the risk of trading taking place on undisclosed information in the period that leads up to a major corporate project like a financing, an acquisition or a take-over. Corporations bring on advisors, then more advisors and still more as their projects approach maturity. With each concentric ripple of growth in the circle of insiders, the risk of illegal insider trading increases. By containing information, we can reduce these risks. This issue often represents a maze for members of the legal profession to navigate. You and your employees are often exposed to inside information in the course of acting for issuers.

Where do you turn for guidance? There are no national or provincial rules for lawyers that directly address the containment of inside information. The task force report calls on the Canadian Securities Administrators to work with the CBA and the provincial law societies to develop substantive best practices for information containment for lawyers.

This issue and the issue of up-the-ladder reporting by lawyers, highlight a curious deficiency in the rules of professional conduct: there are no specific rules providing guidance for representing public corporations. Obviously, many existing rules properly apply to representation of individuals as well as public and private companies. But many of them were written for a different era. Wouldn't it now make sense to combine modern best practices into a comprehensive code of conduct when representing public corporations?

These recommendations are part of the task force's proposals on prevention. The report also emphasizes detection and deterrence.

Detection includes increased and coordinated surveillance and use of technology to find illegal insider trades, such as insider trading alerts between the equity and derivatives markets. It includes development of an electronic database of integrated trade and client data to make it easier to detect and prove illegal insider trading. It includes development of data mining capability to allow review of trading for evidence of patterns of an organized effort to avoid detection and to enhance identification of insider trading involving nominee and offshore accounts.

Deterrence includes increased sanctions for insider trading. In Ontario, legislation was proclaimed earlier this year increasing maximum penalties under the *Securities Act* from two years to five years, and fines from a maximum of one million dollars to up to five million dollars. A recent court case has affirmed a provision of the Act allowing the courts to impose a fine which is the greater of $5 million or a maximum fine of up to three times the profit made or the loss avoided in illegal insider trading cases.

Published academic research indicates that the incidence of illegal insider trading will be reduced through successful enforcement of insider trading laws with severe penalties. However, in Canada, sanctions and remedies vary among provinces, a problem recognized by the Canadian Securities Administrators Uniform Securities Law project. There is a difference among provinces in the maximum penalties available. As well, with the enactment of Sarbanes-Oxley in the United States, a more substantial gap has opened between the maximum terms of imprisonment in the United States and in Canada.

That is why deterrence would be bolstered significantly by passage of the Federal Government's Bill C-46, which would establish new Criminal Code offences of illegal insider trading and tipping. Both the proposed federal law and the CSA's Uniform Securities Legislation project provide opportunities to establish a regulatory framework that effectively addresses illegal trading under criminal, quasi-criminal, administrative and civil processes, sanctions and remedies.

What these measures add up to is an Ontario market that is attractive and conducive to investment. They add up to an opportunity society in which people can build their nest egg. Securities regulation is about maintaining a fair investment environment and eliminating unfair risk. That advances economic opportunity. And that helps create economic growth.

Thank you.

(CSA Release Proposed Uniform Securities Legislation) continued from page 1

contains the procedural components of securities laws and is a companion to the Uniform Securities Act based on the law of Alberta. Each jurisdiction will prepare its own administration act based on this model.

"Today's publication is an achievable, practical and substantial contribution to the ongoing debate on reform of our system of securities regulation. Uniform securities laws would provide significant benefits to participants in Canada's capital markets," said Stephen Sibold, Chair of the CSA and Chair of the USL Steering Committee.

The CSA also published a commentary that provides an overview of the draft Uniform Securities Act and Model Securities Administration Act. The entire package is available on several securities commission websites. Comments on the proposal are requested by March 16, 2004.

The OSC Website, www.osc.gov.on.ca includes:
Information on the OSC, Investor Information, Rules and Regulations, Enforcement Information and Market Participants.